

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Earl M. Riley And Verline B. Riley

Case No. 07-81258

Chapter 13

Social Security No. xxx-xx-1959 and xxx-xx-2500

Address: 307 Ebon Road, Nt, Durham, NC 27713-

Debtors

MOTION TO MODIFY PLAN

NOW COME the Debtors, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on August 31, 2007, with the Chapter 13 plan being subsequently confirmed on November 13, 2007.
2. The Debtors propose to modify the Chapter 13 plan in this case in the following respects:

From: \$4,100.01 per month for: (1) A total of 36 payments, or (2) Until such time as the Debtors have paid to the Chapter 13 Trustee sufficient funds to provide the unsecured creditors (who have valid filed claims) a dividend of 0.00, whichever period of time is longer.

To: \$4,100.01 per month through March, 2009, followed thereafter by \$3,182.00 per month, starting the month of the entry of an Order modifying this plan, for a total of 60 payments. As shown on the attached plan sheet.
3. The changed circumstances that justify the proposed modification are as follows:
 - a. Modifying Plan to strip off 2nd mortgages on both 370 Ebon Road and 833 Waring Street in Durham.
4. An Amended Schedule I for the Debtors is attached hereto and is incorporated hereto by reference.
5. An Amended Schedule J for the Debtors is attached hereto and is incorporated by reference.
6. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes:
 - a. Avoiding unsecured 2nd mortgages.
 - b. Based on the Current income and expenses, as shown on the attached Schedule I & J.

Appended Application for an Additional Attorney Fee

7. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
- a. Calls from and to the Debtors to discuss changes in their situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtors accordingly; and
 - b. Contact with the Trustee's office concerning the proposed modification; and
 - c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
 - d. Drafting this Motion and Certificate of Service; and
 - e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
 - f. Filing of the Motion; and
 - g. Prospective attendance with Debtors at the hearing upon the motion, if any; and
 - h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
 - i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtors.

WHEREFORE, the Debtors pray that this Court grant their Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$350.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: April 1, 2009

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
North Carolina State Bar No.: 23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

Riley Modification 07-81258.wpd (rev. May 23, 2006)

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on April 1, 2009 , I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

and by regular first-class U.S. mail, addressed to the following parties:

Earl M. Riley And Verline B. Riley
307 Ebon Road, Nt,
Durham, NC 27713-

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Renee Nolte
Renee Nolte